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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,622	09/30/2003	Stephen Friend	66205-0001	4195

10291 7590 03/24/2005

RADER, FISHMAN & GRAUER PLLC  
39533 WOODWARD AVENUE  
SUITE 140  
BLOOMFIELD HILLS, MI 48304-0610

EXAMINER
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SZUMNY, JONATHON A

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/674,622

Applicant(s)

FRIEND, STEPHEN

Examiner

Jon A Szumny

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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This is the third office action for application number 10/674,622, Bottle Retainer, filed on September 30, 2003.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

*Continued Examination Under 37 CFR 1.114*

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 11, 2005 has been entered.

*Claim Rejections - 35 USC § 112*

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 3, the base has been defined as having "an affixing portion and a retaining portion." However, in line 5, it is stated, "at least two...arms, extending from the base...." Are these arms part of the retaining portion, or separate from the retaining portion? It appears from the specification that the retaining portion *comprises* the arms, and the Examiner will assume this is so for the purposes of this office action. Similarly, in claim 2, the applicant recites "wherein

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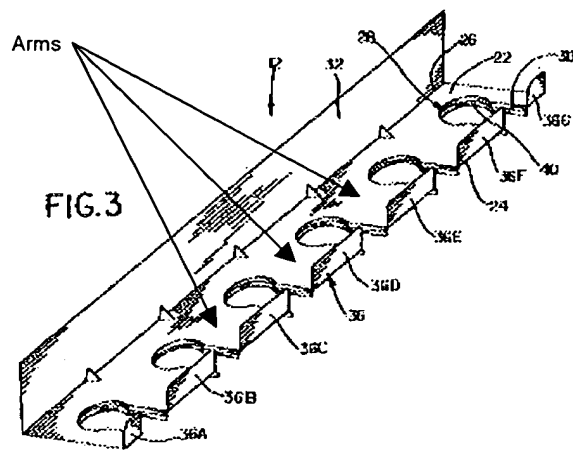
the retaining portion *further* comprises at least three...arms". Are these arms in addition to the two arms previously recited? Or are these three arms replacing the two arms previously recited? The Examiner will assume after claim 2 is read, there are a total of "at least three arms".

In claim 1, line 6, "said openings" is ambiguous since it is possible for "at least one opening therebetween" to comprise only a single "opening". Therefore, "said openings" should be --said at least one opening--.

Further, it is not clear if the applicant is intending to *functionally* or *positively* recite the "bottle" and "cap" as part of the invention. The preamble of claim 1 recites the former "...for securing and suspending a bottle...", but then the "bottle" and "cap" are recited positively later on in claim 1, "wherein the arms engage under the top portion in a groove defined between the lower portion and the cap...". The applicant must make it clear whether the "bottle" and "cap" are *functionally* or *positively* recited as part of the invention. For instance, stating --wherein the arms *are adapted to engage...*-- would recite the "bottle" and "cap" functionally. For the purposes of this office action, the Examiner will assume the *functionally* or *positively* merely **functionally** recited as part of the invention. Further, in line 7, "said opening cooperating to" should be --said at least one opening adapted to cooperate to...-- so as to more clearly recite the "bottle" and "cap" functionally if so desired.

### *Claim Rejections - 35 USC § 102*

Claims 1-3, 5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent number 6,120,224 to Powell.



Powell '224 discloses a retainer (figures 1,3) comprising a base (12) having affixing and retaining portions (32,22, respectively), wherein the affixing portion has front and back sides such that the back side is for mounting the retainer to a surface (column 3, lines 66-67 through column 4, lines 1-2), wherein at least two generally horizontal substantially parallel arms (above) extend from the base to form at least one unobstructed opening with no covering members (28), wherein the retainer could inherently perform all stated functions, wherein the retaining portion further comprises three of the arms so as to form at least two of the openings, wherein each of the arms has at least one raised obstruction (36C,36D,36E) positioned on an upper portion of the arm, wherein the affixing portion is inherently adapted to receive at least one fastener for mounting the retainer to a surface (column 3, lines 66-67 through column 4, lines 1-2), wherein the at least two openings are equivalent in size.

### *Claim Rejections - 35 USC § 103*

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Powell '224 in view of Weterrings et al. '673.

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Smith et al. '690 teaches the previous invention failing to specifically teach the affixing portion to further include an adhesive layer adapted to mount the retainer to a surface. Nevertheless, Weterings et al. '673 divulges a bottle retaining comprising an affixing portion and a retaining portion, wherein the affixing portion further includes an adhesive layer (32) adapted to mount the retainer to a surface. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have replaced modified the affixing portion of Powell '224 so as to have an adhesive layer as in Weterings et al. '673 so as to provide an alternate and common mounting/affixing means that is well known in the art, as is taught by Weterings et al. '673.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Powell '224 in view of Flynn '504.

Powell '224 teaches the previous invention failing to specifically teach a first of the openings to be smaller than a second of the openings. Nevertheless, Flynn '504 divulges a retainer having an affixing portion and a retaining portion wherein the retaining portion includes substantially parallel arms with openings therebetween wherein a first of the openings is smaller than a second of the openings. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified a first of the openings of Powell '224 to be smaller than a second of the openings so as to allow a greater variety of various sized objects to be used with the retainer hence increasing the utility of the retainer.

### *Response to Arguments*

Applicant's arguments filed March 11, 2005 have been fully considered but they are not persuasive.

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Applicant's arguments with respect to claims 1-7 have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon A Szumny whose telephone number is (703) 306-3403 and (571) 272-6824 after April 7, 2005. The examiner can normally be reached on Monday-Friday 8-4.

The fax phone number for the organization where this application and proceeding are assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113 and (571) 272-3600 after April 7, 2005.



Jon Szumny  
Patent Examiner  
Technology Center 3600  
Art Unit 3632  
March 21, 2005